Supreme Court, U.S.
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No. 99-770

In The
Supreme Court of the United States

HANS-HENNING STIER,
Cross-Petitioner,

v.

READING & BATES CORPORATION and
READING & BATES DRILLING CO.,
Respondents.

On Petition For A Writ of Certiorari to the Supreme Court of Texas

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDINGS BELOW

The parties are as listed in the caption. Respondents are Reading & Bates Corporation and Reading & Bates Drilling Co. Cross-Petitioner is Hans-Henning Stier.

Respondent Reading & Bates Drilling Co., which is now known as R & B Falcon Drilling Co., is wholly owned by respondent Reading & Bates Corporation. Reading & Bates Corporation, which is now known as R & B Falcon Drilling (International & Deepwater) Inc., is wholly owned by R & B Falcon Corporation, a publicly traded company.

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I

JURISDICTION

Respondents Reading & Bates Corporation and Reading & Bates Drilling Co. are petitioners in No. 99-558. This Court has jurisdiction over their petition in that cause.

In *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), this Court acknowledged that in the past it has recognized at least four categories of cases in which the Court has departed from the strict requirement of finality that 28 U.S.C. § 1257 imposes. These four categories represent a limited set of situations in which the Court has treated a state court decision as a final judgment under section 1257 and has taken jurisdiction without awaiting the completion of the additional proceedings anticipated in the lower state courts. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. at 476-78. These four categories include

> those situations where the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review here might prevail on the merits on nonfederal grounds, thus rendering unnecessary review of the federal issue by this Court, and where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action rather than merely controlling the nature and character of, or determining the admissibility of evidence in , the state proceedings still to come. In these circumstances, if a refusal immediately to review the state court decision might seriously erode federal policy, the Court has entertained and decided the federal issue, which itself has been finally determined by the state courts for purposes of the state litigation.

Id. at 482-83. Since deciding *Cox*, this Court has taken jurisdiction in at least three cases where, as here, a state court has decided a matter of federal preemption and has ordered continued proceedings in the state court under state law.

In *Belknap, Inc. v. Hale*, 463 U.S. 491 (1983), this Court took jurisdiction of a case in which the Kentucky Court of Appeals, upon holding that the NLRA did not preempt a plaintiff's state law causes of action, reversed a summary judgment based on preemption and remanded the case to the trial court for a trial. *Id.* at 497 n.5. In *Southland Corp. v. Keating*, 465 U.S. 1 (1984), this Court took jurisdiction of a case in which the California Supreme Court, upon holding that the Federal Arbitration Act did not preempt that state's franchise investment statute, remanded the case to the trial court for consideration of a request for class certification with respect to court-ordered arbitration. *Id.* at 4-8. Finally, in *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174 (1988), this Court took jurisdiction of a case in which the Ohio Supreme Court, upon upholding a state workers' comp statute against a Supremacy Clause challenge, remanded the case to a state agency for a hearing on the merits of the workers' comp claim. *Id.* at 179-80.

The Court's acceptance of jurisdiction in these cases rests on the "understandable principle that where the proper forum for trying the issue joined in the state court depends on the resolution of the federal question raised on appeal, sound judicial administration requires that such a question be decided by this Court, if it is to be decided at all, sooner rather than later in the course of the litigation." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. at 506 (Rehnquist, J., dissenting). Thus, without review of the decision of the Supreme Court of Texas "there would remain in effect the unreviewed decision of the State Supreme Court" holding that the Jones Act does not preempt Stier's foreign law claims. *Id.* at 485. On the other hand, reversal of the Texas court's decision in this setting will terminate litigation of the merits of this dispute.

In *Jefferson v. City of Tarrant, Alabama*, 118 S. Ct. 481 (1997), this Court recognized the continuing validity of its analysis in *Cox Broadcasting Corp. v. Cohn* and of the four exceptions to the final judgment rule of section 1257. *Id.* at 486-87.

In the court below, the Supreme Court of Texas has ruled that the Jones Act does not interfere with Stier's right to assert foreign law claims in the state courts. That supreme court has remanded this case for a trial on those foreign law claims. Should Reading & Bates prevail in the trial court, the decision of the Supreme Court of Texas on this important point of federal preemption would remain in effect, not subject to further review.

Therefore, this Court has jurisdiction of the petition for writ of certiorari in No. 99-558, containing the Reading & Bates challenge to the action of the Supreme Court of Texas.

ARGUMENT

Among other things, Stier argues that due process concerns prohibit any construction of the Jones Act that would preclude the assertion of state law claims by a foreign national who had significant contacts with a state. Conditional Cross-Petition at 15-16. In the courts below, Stier raised no direct constitutional challenge to the construction of the Jones Act that the respondents urged or that the Texas courts adopted. Because the lower courts did not address such a constitutional challenge, Stier may not raise the issue now.

The respondents reserve their right to challenge the arguments that Stier offers on the merits of his position, including statements of fact Stier offers in support of his cross-petition.

CONCLUSION

This court should deny the Conditional Cross-Petition for Writ of Certiorari that Stier has submitted.

Respectfully submitted,

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